

# Advisory Opinion

IECDB AO 2004-15

October 21, 2004

TO ALL INTERESTED PERSONS:

Pursuant to Iowa Code section 68B.32A(11) and rule 351—1.2, the Iowa Ethics and Campaign Disclosure Board issues this opinion on a county commissioner of elections being involved with a ballot issue or another candidate's campaign when the election is under the commissioner's jurisdiction. We note at the outset that the Board's jurisdiction is limited to the application of Iowa Code chapters 68A and 68B and rules in Iowa Administrative Code chapter 351.

OPINION:

The issue has been raised concerning whether or not it is permissible for a county commissioner of elections (county auditor) to be involved with a ballot issue or candidate campaign and then overseeing the election where the outcome is decided.

Pursuant to Iowa Code section 68B.32A(11), the Board has the authority to issue advice concerning the application of the ethics laws to county officials. However, the Board does not have the authority to investigate complaints or impose sanctions for violations of Chapter 68B by local governmental personnel.<sup>1</sup> However, advice contained in a Board opinion, if followed, constitutes a defense to a filed complaint involving the same factual situation.

The conflict of interest law in Iowa Code section 68B.2A prohibits, in part, county officials from engaging in an outside employment or activity that is "subject to the official control, inspection, review, audit, or enforcement authority of the person...."

The Board believes there are enough procedural safeguards in place to prevent a county commissioner of elections from misusing his or her office to affect the outcome of an election. It is also questionable whether or not administering an election, given the current procedures, even falls within the prohibited terms set out in the statute. Finally, to prohibit county commissioners of elections to be involved in a ballot issue or candidate campaign would impermissibly restrict their freedom of speech.<sup>2</sup>

Therefore, while a county commissioner of elections being involved in a ballot issue or another candidate's campaign may raise an appearance of impropriety, the Board does not believe that such activities are prohibited under the law.

In closing, the Board notes that Iowa Code sections 68B.2A(1) and 68A.505 and the Board's rules in 351—Chapter 5 all would restrict a county commissioner of elections from using governmental time and other governmental resources to benefit a campaign.

BY DIRECTION AND VOTE OF THE BOARD

James Albert, Board Chair

Janet Carl, Vice Chair

Gerald Sullivan

Betsy Roe

John Walsh

Patricia Harper

Submitted by: W. Charles Smithson, Board Legal Counsel

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<sup>1</sup> See Iowa Code sections 68B.32B(1) and 68B.26.

<sup>2</sup>It would also mean that a county auditor seeking reelection, and arguably the auditor's staff, could not administer that particular election.